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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 191.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES AND FARMER BROS. CO., A CORPORATION, the real parties in interest,

Petitioners,

vs.

GAY LILLEFLOREN, RUSSELL MARKS, L. L. SYLVANE, HOMER FORD and IRV MAGISEN,

Respondents.

BRIEF FOR RESPONDENTS L. L. SYLVANE HOMER FORD AND IRV MAGISEN.

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Opinion Below.

The opinion of the Supreme Court of the State of California annulling the judgments committing the respondents for contempt and discharging the respondents is set forth in the transcript of record at page 215.

Statute Involved.

Respondents Homer Ford, Irv Magisen and L. L. Sylvane were charged in the Court below with contempt of court as defined in Section 1209, subsection 5, of the Code of Civil Procedure of the State of California [R. 130, 145 and 167, respectively].

Statement of the Case.

The applicants for certiorari apparently did not make it clear to this Honorable Supreme Court of the United States that they are seeking review of a judicial decree to which they are not parties. The decree in question came before the Supreme Court of California on application by respondents for a Writ of Review of their commitment for contempt. The Supreme Court of California discharged respondents [R. 216]. The reference to petitioner as being the Superior Court arises out of a procedural method in California where proceedings in contempt against parties violating orders in a civil action are prosecuted by the court that issued the injunction.

The within proceedings arise out of the following facts: Farmer Bros. Co., on May 21, 1946, commenced in the Superior Court an action for injunction and damages against numerous labor unions and individuals. The complaint is set forth in the present transcript of record commencing on page 7. Your respondents Irv Magisen, Homer Ford and L. L. Sylvane are mentioned as defendants, individually and as agents and representatives of the labor unions.

A consideration of the complaint will disclose that it is alleged that on April 29, 1946, respondents and others placed a picket line about the plant of Farmer Bros. Co., coupled with allegations that said pickets were not employed in said company. In paragraph XXII of said complaint [R. 16] there is an allegation that the defendants, including Irv Magisen, a respondent herein, were reported to have stated to employees that they would place a picket line about the place of unidentified customers, suppliers and carriers.

The contempt proceedings against respondents are predicated solely on affidavits of Roy Farmer, appearing at R. 81 and R. 97. It was the position of the respondents in the Supreme Court of California that these affidavits upon which the contempts were based were jurisdictionally defective and lacking in substance of matters essential to confer jurisdiction upon the petitioner court to entertain the citation for contempt in the first place.

Under California law contempt of court is a public offense, a misdemeanor, and contempt proceedings are of a criminal nature even though originating from a civil action:

Frowley v. Superior Court, 158 Cal. 220, 110 Pac. 817;

In re McCarty, 154 Cal. 534, 98 Pac. 540;

McClatchy v. Superior Court, 119 Cal. 413, 39 L. R. A. 691, 51 Pac. 696;

Schwartz v. Superior Court, 111 Cal. 106, 43 Pac. 580;

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Ex parte Ah Men, 77 Cal. 198, 11 Am. St. Rep. 263, 19 Pac. 380;

Ex parte Hollis, 59 Cal. 405;

Myers v. Superior Court, 31 Cal. App. Dec. 520, 189 Pac. 109;

S. Anargyros v. Anargyros & Co., 191 Fed. 208;

Hammond Lumber Co. v. Sailors' Union, 167 Fed. 809.

The facts constituting the contempt must be stated in an appropriate form in an affidavit and the party charged has the same right to be heard in his defense as he would against the charge of a crime.

On the irrefutable authorities of California the proceedings must be examined in the light of the sufficiency of the charging affidavits and no other records. We respectfully refer to the ruling in the case of *Schwartz v. Superior Court,* reported in 111 Cal. at p. 112. In this case the law was pronounced by the Supreme Court of California to be as follows:

> "Contempt being a criminal proceeding, and the party being entitled to know with what he is charged, it will not be presumed that he was held guilty of some act not specifically alleged in the affidavit or fairly covered thereby. The offense being criminal in its nature, both the charge and the finding and judgment of the court thereon are to be strictly construed in favor of the accused. (*Batchelder v. Moore,* 42 Cal. 412; *Maxwell v. Rives,* 11 Nev. 221; *Phillips v. Welch,* 12 Nev. 158, 187.)"

In addition to the *Schwartz* case, *supra,* we respectfully allude to the holding in the case of *In re Lake,* which in an Appellate Court decision reported in 65 Cal. App. on page 426, wherein the following appears:

> "There is no deviation from the rule that unless the affidavit charging constructive contempt 'contains a statement of facts which shows on its face that a contempt has been committed, the court is without jurisdiction to proceed in the matter, and any judgment of contempt thereon is void.'" (5 Cal. Jur., pp. 938, 939.)

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The Supreme Court, upon review of the commitments of respondents, annulled the judgments and orders of commitment in each case and discharged each of the respondents [R. 216].

Such discharge is a final determination of the cause and the only means of prosecuting respondents for contempt is by an entirely new prosecution for contempt. (*In re Hampton,* 98 Cal. App. 480; *Ex parte Mefferd,* 110 Cal. App. 1.)

The respondents, L. L. Sylvane, Homer Ford and Irv Magisen, now urge this Honorable Supreme Court of the United States to dismiss the Writ of Certiorari on the following grounds:

1. That the decision of the Supreme Court of California, which construed the original rule for contempt, did not present a federal question.

2. The act of the Supreme Court of California in ordering the court below to discharge the rule for contempt, was not subject to review in this court.

3. The case is now moot.

In discussing the foregoing grounds for motion to dismiss, it is important to note that the conduct claimed to constitute contempt consisted of no more than peaceful picketing, a course of conduct not proscribed by the restraining order [R. 83, Subsec. C; R. 99, Subsec. C].

It should be borne in mind that the proceedings under review pertain and relate solely to the question as to whether these respondents were guilty as a matter of law of contempt of a valid order of the petitioner court. The Supreme Court of California on review held that the respondents were not guilty of contempt and discharged them.

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When the highest court of a State holds that a party thereto is not guilty of contempt, no Federal question is presented.

In *Newport Light Co. v. Newport,* 151 U. S. 527, Mr. Justice Jackson, speaking for the court, said:

> "This court has never gone to the extent of holding that such an order, as is here sought to be reviewed, was either a final judgment of the highest court of a State, or presented a Federal question, such as would entitle a party to have the judgment reexamined here. The case presented both in the lower court and the appellate court of Kentucky was simply whether the acts of the defendants in error could be properly considered a violation of the injunction granted in the original cause. . . .
>
> ". . . If the proceeding below, being for contempt, was independent of and separate from the original suit, it cannot be reexamined here either by writ of error or appeal. This was decided more than fifty years ago in *Ex parte Kearney,* 7 Wheat. 38, and the rule then established was followed as late as *New Orleans v. Steamship Company,* 20 Wall. 387. The court held that it had no jurisdiction, and dismissed the writ of error.
>
> "No decision of this court has gone so far as to hold that the construction which the highest court of a State places upon its own judgment, and under which construction it holds that a party thereto has not been guilty of contempt, presents a Federal question, such as would confer jurisdiction upon this court to reexamine or reverse such a judgment.
>
> ". . . This court is not called upon to review the correctness or incorrectness of this reasoning on which the Court of Appeals reached its conclusion

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that the order of the lower court was erroneous. The judgment of the Court of Appeals, whatever may have been the reasons assigned therefor, merely reversed the action of the lower court, declaring that the defendants in error were in contempt, and directed that court to discharge the rule against them.

"For the foregoing reasons we think no Federal question is presented by the writ of error, and it is hereby dismissed."

Although the petition and brief for petitioners refers to Farmer Bros. Co. as being the real party in interest, the records of the Superior Court in the action involved herein show that Farmer Bros. Co. dismissed its complaint with prejudice on October 15, 1947, prior to the application by the petitioners for a rehearing in the Supreme Court of California. The case is now moot.

Kimball v. Kimball, 174 U. S. 158;

Tregea v. Modesto Irrigation Dist., 164 U. S. 179.

Whether the decision of the Supreme Court of California was legally correct is immaterial to Farmer Bros. Co. or to the Superior Court since Farmer Bros. Co. has no interest in this case by reason of its dismissal, and the Superior Court is bound by the rulings of the Supreme Court of the State of California.

Chrisman v. Culinary Workers, Local 62, 46 Cal. App. 2d 129;

Janofsky v. Garland, 42 Cal. App. 2d 655;

Capron v. West, 114 Cal. App. 633.

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Respondents contend that Sections 1131-1136 of the Labor Code of the State of California, as added by California Statutes 1941, Chap. 623, commonly referred to as the "Hot Cargo" Law, are not involved in this proceeding and that the only question involved herein was whether or not respondents were guilty of contempt. If, in the Court's determination, the "Hot Cargo" Law is involved, respondents respectfully request that they have the right to reserve discussion of the constitutionality of that law upon the oral argument, if this Honorable Supreme Court, after considering the contentions heretofore presented, on its motion does not dismiss the proceedings herein.

Respectfully submitted,

DAVID SOKOL,

Attorney for Respondents.